

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 17-20521

v.

Hon. JUDITH LEVY

D-1 MICHAEL BERENSON,

Defendants.

Government's Sentencing Memorandum

Of the more than 27 offenders apprehended and charged in the Eastern District of Michigan for their conduct on Website A, and the more than half-dozen that have been located elsewhere in the United States, Michael Berenson is by far the most culpable. Working in groups and by himself for over a decade, Berenson systematically manipulated thousands of children for his own sexual gratification. But, for Berenson, unlike his cohorts, manipulating children nearly a third of his age, was insufficient. No bar was too low for him, no conduct too evil, no girl too young. He stalked, he blackmailed, he terrorized. Some girls cut

themselves because of him, some attempted suicide, and at least one may have actually ended her life.

There are no words to quantify Berenson's conduct, no way to explain it or convey the depth of his sadism. Berenson deserves to be in prison for 50 years for each victim he produced child pornography of, each girl he blackmailed, each video of them he shared across the Internet, each private, intimate act he recorded through their web camera. Conservatively, and by his own admission, he victimized over 1,000 little girls, leading to a calculation of 50,000 years. Instead, the Government requests a sentence of life imprisonment.

I. Factual Background

Berenson has been exploiting children for the entirety of his adult life. In 2008, he visited Website A for the first time. By then, Berenson was familiar with a number of web camera based sites. Indeed, offenders in investigations across the country and internationally have named Berenson as one of the worst. Berenson himself admitted to using Blog TV, Condor Chat, Live.Me, TinyChat, Website A, and a number of other websites that are currently under investigation.

In 2010 or 2011, Berenson joined forces with a group of six to eight other adult males to target minors on Website A. Berenson and the others pretended to be teenage boys or girls. Their objective was to get 8 to 17 year-old girls to masturbate on web camera so that they could record it. In order to accomplish this, they created a password-protected chatroom on Website A called “Base” where they would strategize and organize about how best to trick girls into doing what they wanted.

This group (hereinafter the Base Group) called themselves a “team” and divvied up roles for each member. There were hunters, talkers, and loopers. Hunters were in charge of finding kids on monitored, safe websites that kids visit like Musically, YouNow, and MyLOL. They then were tasked with tricking these kids into coming to completely unmonitored chatrooms on Website A, where there was no one to flag activity or ban users. Once the girl or “target” arrived, the hunter would alert their “team” to the new conquest. *See United States v. Fuller et al.*, 16-20239, Apr. 4, 2017 Tr. T., 402-03. The talkers then came into the chatroom, telling the girl how beautiful she was and spending hours getting to know her. This involved the talkers spinning an intricate web of lies about their own lives to try to convince the girl that they were her

peers. Sometimes, the talkers “worked” on a girl for many weeks, gradually inducing her to trust and open up to them. As one member of the Base Group put it, the talkers’ job was to “make the victims feel wanted . . . to slowly, through words and coercion and enticement try and get them [] moving towards committing acts of sexual nature.” (*Id.* at 404).

If the talkers were unable to get the “win” or a “show,” then a looper would play a previously recorded video of a teenage girl or boy in the chatroom, pretending to be that girl or boy. The “loop” or video would eventually engage in sexual activity, and all of the other group members would compliment the “loop” for doing so and stop paying attention to the targeted minor until she did the same activity.

The looper’s first task was to “convince[] the girl that the loop is real . . . and there are ways to do that. Most of the younger females are ignorant of how live people really act all the time . . . and that’s where the talkers come in. They keep constantly redirecting her thought process in certain ways in order for her to take the loop for granted. Most of the younger females . . . they’re not as tech savvy as the more older

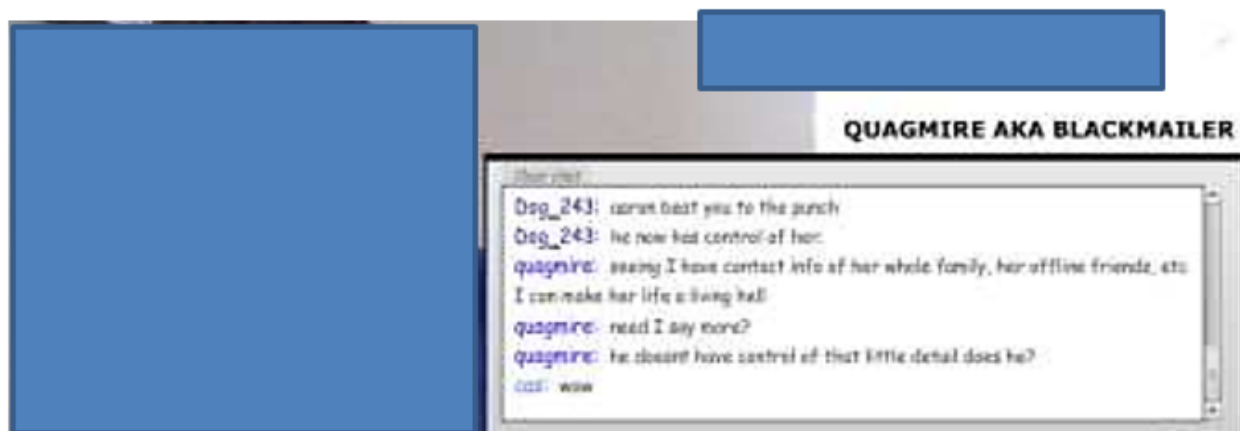
ones.” (*Id.* at 404-05). If the looper successfully got “win” for the team, then everyone in the group typically would record or “capture” it.

The Base Group soon became the prototype for multiple others on Website A, including the “fans” group (*United States v. Fuller et al.*, 16-20239), the “Skype” group (*United States v. Eisley et al.*, 17-20632 and *United States v. Wright et al.*, 18-20302), and the “Bored” group (*United States v. Maire et al.*, 18-20128). In fact, multiple of the Skype Group members and Fans Group members were first a part of the Base Group, including Virgil Napier, Jr. (aka **WINTER, NIETZI**), Eric Robinson (aka **TOSTIDOS, CHIPS**), Noel Eisley (aka **SERF, JOEY**), and Terry Kovac (**FUBAR, CHRIS**).

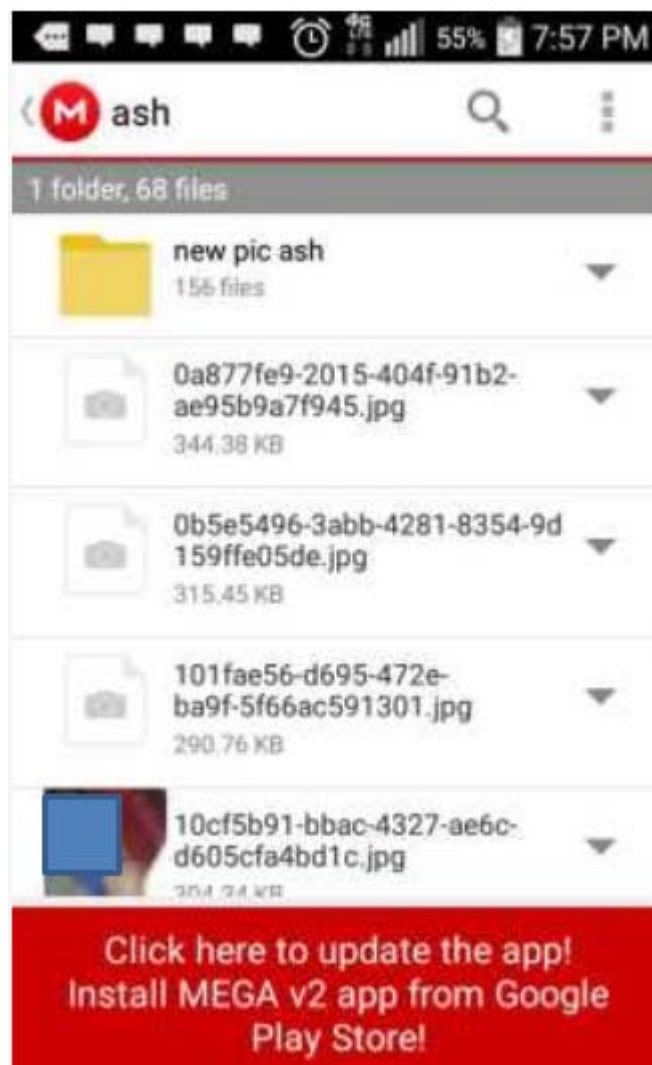
These other offenders left the Base Group for a reason. They wanted to keep enticing girls but they wanted there to be boundaries. Unlike the Base Group, all of these latter groups prohibited blackmailing girls – that is threatening to send sexually explicit images of a girl to her family, friends, school, or church if she refused to continue getting on web cam and showing her body. And, unlike the Base Group, all of these other groups also prohibited distributing the explicit videos and images they made to “outsiders.” Berenson, who had many usernames but primarily

went by **QUAGMIRE**, **BEEFMASTER**, and **COREY**, did not have these same boundaries. He thrived on blackmail, and he widely distributed the images and videos he made. And, this was well known by almost everyone on Website A.

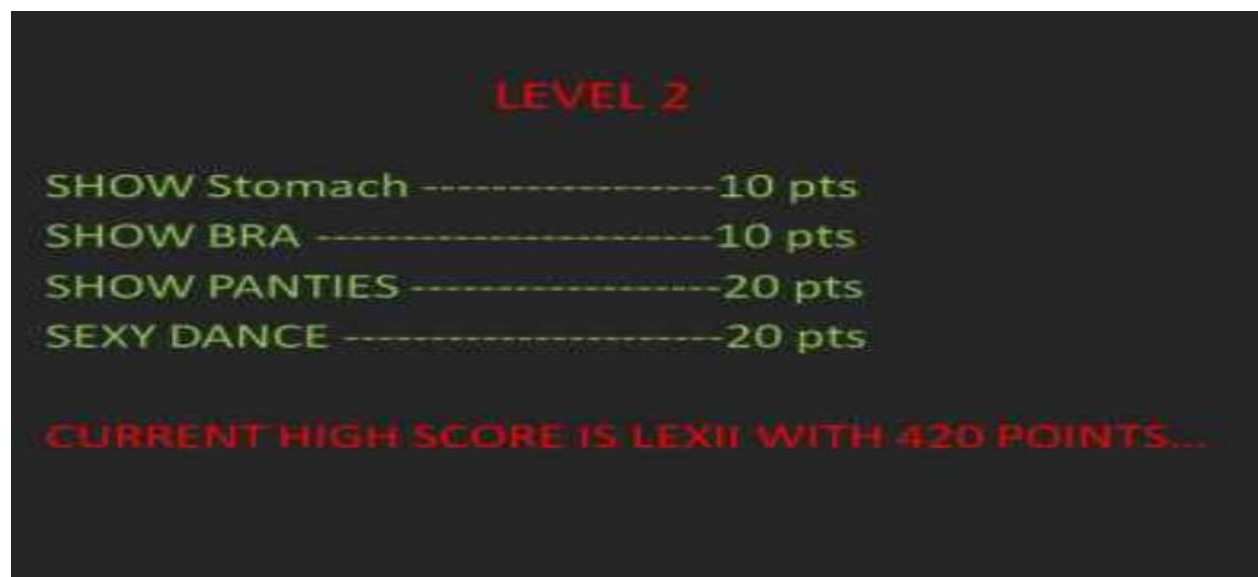
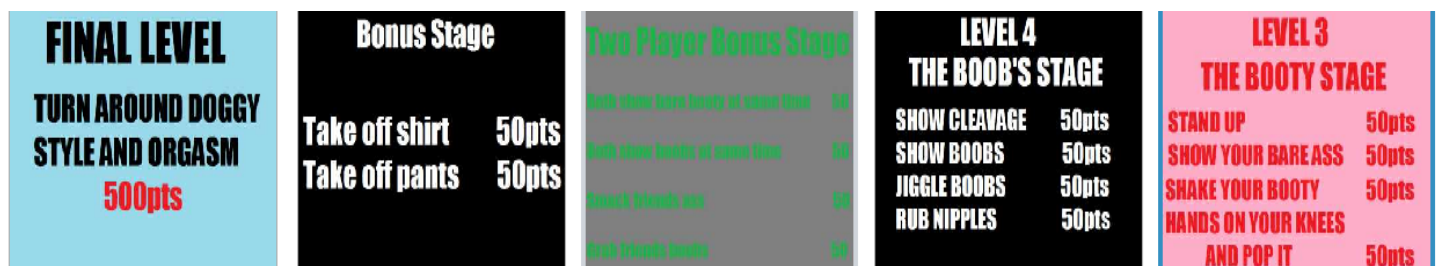
Virgil Napier, Jr. explained that **QUAGMIRE** consistently offered the videos he made for trading. He would commonly post in a large public room on Website A that he had videos of a specific minor. Another offender who knew Berenson opined that he was one of the “worst blackmailers on the Internet”; he stated that Berenson “post[ed] lots of nude and masturbation videos of young girls,” and he had personally seen Berenson threaten girls. *See* Ex. D, Skype Chats. Yet another offender took a screenshot of Berenson bragging about his blackmail. Berenson (aka **QUAGMIRE**) wrote, “I have contact info of her whole family her offline friends, etc. I can make her life a living hell. Need I say more?”



Because of the division in the group about rules of conduct, the Base Group disbanded after about ten months, but Berenson continued to work with others on Website A, BlogTV, and other sites to target and blackmail girls. He logged-on to Website A on a daily basis and produced child pornography of more than a thousand girls. He distributed the child pornography he made on multiple websites, posting folders containing hundreds of files on Mega.Nz.



Along with the general tactics described above and the blackmail (discussed more below), Berenson used competitions to pit girls against each other to get them to engage in sexual activity. Berenson and others would have two girls get on web cam in one chatroom and give them points for taking off certain items of clothing and engaging in sexual activity. The girls could go from “Level One” to “Level Two” if they obtained enough points, then to “Level Three,” and so on. Berenson took screenshots of many of the different point systems (see Ex. F):





Berenson is the most sophisticated technologically of any so-far arrested Website A defendants. Berenson used “remote access trojans” (RATS). He would send out links to girls and other offenders so he could take over their computers. He took over girls’ web cameras, spying on them when they were in their room undressing, playing and being children – and not even using their computers. He used this technique to spy on at least two girls, MV-30 and MV-31, for months. He shared MV-30’s information with another offender who he later told the FBI “was the main guy working her.” He also used it to blackmail other

pedophiles. According to him, he would change offenders' passwords, change their account recovery options, steal their girls, and download their hard drives. Sometimes he would take some of the child pornography from their computers and then use it to extort them to get more child pornography.

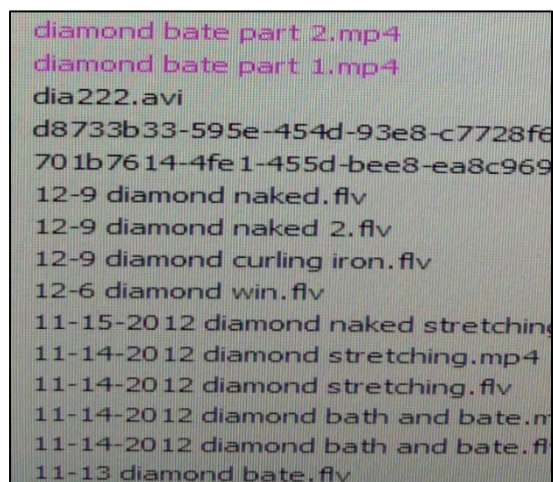
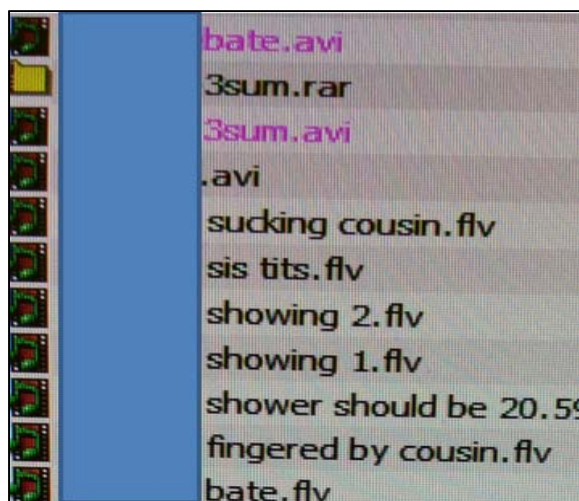
Berenson is also the most callous of any Website A offender so-far arrested. His callousness led numerous girls into the depths of depression, self-harm, and attempted suicide, and it may have actually resulted in one or more suicides. There is no way to recount the harm he did to each victim in this memorandum, even though each girl's story deserves to be told here. In telling a part of what happened to just a few, the Government hopes to enable the Court to at least see part of the pain, humiliation, and suffering that these girls and so many others endured. *See also* Ex. A, Impact Statements, Filed Under Seal.

A. MV-1 and MV-2

MV-1 and MV-2 were the girls most victimized by the Base Group. Both girls were blackmailed. MV-1 was approximately 14-years old and MV-2 approximately 13 when the Base Group first targeted them. MV-1 showed the group scars of her self-harm, told them she was depressed,

and even wrote a suicide note while on web cam. *See* Ex. A-1. MV-2 had a physical medical condition that the group knew about. Nevertheless, the group continued to target them. Berenson produced over 50 child exploitive and child pornography videos of each girl. At one point, the group even got MV-1's relatives involved.

For example, in a video Berenson entitled **MV-1 sucking cousin**, MV-1 is depicted in a child's bedroom with MV-17 and MV-18. During the video, she performs oral sex on MV-18. In another video, over 40 minutes in length and entitled **MV-1 3sum**, the three children are on a bed with an open laptop. MV-1 and MV-18 have anal and vaginal sex; MV-17 digitally penetrates MV-1 and touches her breasts. Berenson had a folder devoted to his "captures" of MV-1 and MV-2. He referred to MV-1 using her real name but referred to MV-2 using the name Diamond. Some of the file names he used are depicted below:



MV-1, MV-2, and MV-18 plan to attend sentencing. MV-17 and MV-18's mother will also attend.¹ *See* Exs. A-1, A-2, A-17, A-18, Victim Information, Under Seal.

B. MV-24

Around the time that Berenson was victimizing MV-1, MV-2, MV-17, and MV-18, he was also hurting another girl, MV-24. MV-24 submitted two victim impact statements and will attend sentencing. *See* Ex. A-24. Berenson had over 120 child exploitative and child pornography videos of her. She got so desperate for it to stop that she found out his real phone number and called his house. She spoke to his parents and told them what he had been doing to her, crying on the phone. She called multiple times. But, even after his parents found out what he was doing, Berenson was undeterred. MV-24's account of the first time Berenson victimized her is consistent with the cruelty many of the girls experienced:

I remember the first time I saw Michael. I was 14 years old, in my bedroom wearing a white t-shirt. The only reason I remember what I was wearing, is because he later had me take it off. I was so worried that my parents might walk in, so I locked the door and sat in front of the computer ... Michael and I were both on cam and watching each other. I

¹ MV-17 is unable to attend because she is pregnant. However, she submitted an impact statement.

remember feeling weird, having a man so much older watching me and flirting with me. It felt wrong and it made me feel dirty, but a part of me, being an insecure 14 year old girl, liked the attention. He kept asking me to get undressed over and over again. I was too worried at first, but after a while, I did take off my shirt. I don't remember how long it was off, or what else happened that night.

I honestly subconsciously blocked it all out. I remember the next day, though. He was telling people he recorded me or "capped" me the night before. He was telling me he was going to show other pedophiles and he thought it was funny. It was a big joke to him.

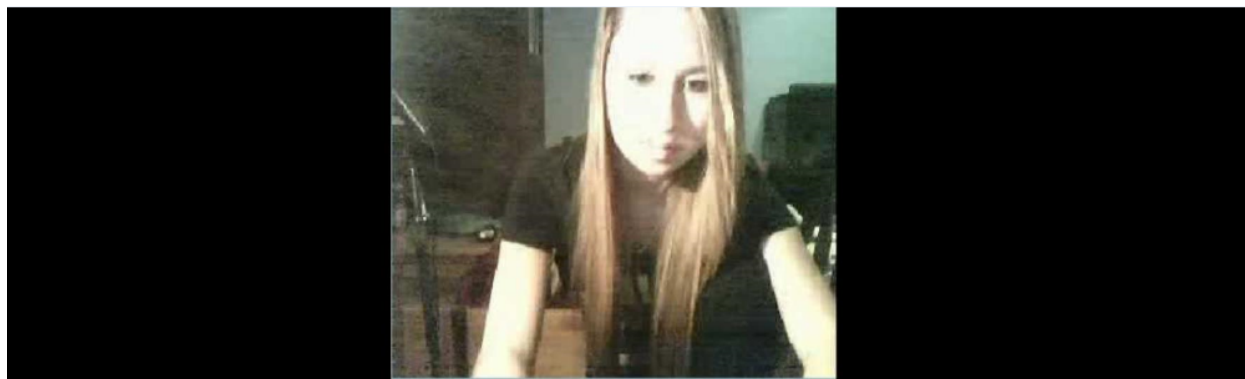
MV-24 notes, "I will remember him for the rest of my life, and what he made me feel. I will remember his face, his smile, when he thought it was funny to make girls feel scared."

C. Amanda Todd

Amanda Todd is MV-27 in this case. Amanda was a 15-year old girl who frequented the website BlogTV in approximately 2011-2012, one of the many websites where Berenson was then producing child pornography. Berenson admitted that he had seen Amanda on camera engaged in sexual activity in a chatroom "dialogo" and told the FBI that they would find sexually explicit videos of Amanda on his devices. He denied ever speaking to her directly. So far, the FBI has found at least

ten child exploitive and child pornography videos of Amanda on Berenson's devices. Many of these videos were in a folder titled "Forever Amanda." During portions of several of the videos, Amanda is not wearing pants or underwear and is displaying or touching her vagina. One video is entitled, "so much win." The others are entitled with her name followed by a number.

One video, entitled Amanda Todd 3.avi, depicts Amanda in her bedroom looking at what appears to be a computer screen. Amanda dances around, touches her vagina, and eventually disappears for a moment. When she reappears, she is not wearing pants or underwear and is in the back corner of the screen. The video is eight minutes long. A screenshot from the video as it was recovered from Berenson's devices is depicted below:



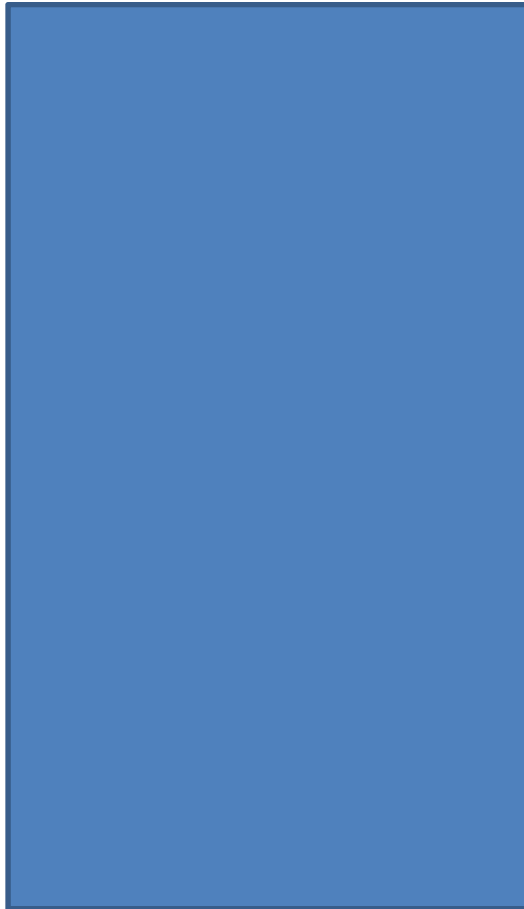
Among the child exploitive videos and images Berenson had was the file of her showing her chest, or what he called her "flashing," that

law enforcement knows was used to blackmail her. In September of 2012, Amanda made a video recounting the blackmail and describing the impact it had on her. In the video, Amanda uses sticky notes to tell her story. The original video Amanda made with the music she chose is located at <http://www.amandatoddlegacy.org/>. See also Govt. Ex. B, Amanda Todd Impact Statement, Filed Under Seal. Amanda wrote,

I'm struggling to stay in this world because everything just touches me so deeply. I'm not doing this for attention. I'm doing this to be an inspiration and to show that I can be strong. I did things to myself to make the pain go away, because I'd rather hurt myself then someone else. Haters are haters but please don't hate, although I'm sure I'll get them. I hope I can show you guys that everyone has a story, and everyone's future will be bright one day, you just gotta pull through. I'm still here, aren't I?

-Amanda xoxo Sept. 7, 2012

A little over a month later, on October 10, 2012, Amanda hung herself. Berenson was well aware of her suicide. He had numerous screenshots of conversations about it on his devices. He also had a comic strip that he saved with a file name "Amanda Todd." The comic strip depicts Amanda as a cartoon. In each window, Amanda is doing something different, all leading up to the last window in which she is depicted hanging herself.



will the girl who says can take it
[redacted] reply to [redacted] how the comment 3 minutes ago

well I have no idea what you're talking about B_o
[redacted] reply to [redacted] how the comment 3 minutes ago

well it's a picture, attention looking wrong?
[redacted] reply to [redacted] how the comment 3 minutes ago

I AM ACTIVELY BLACKMAILING GIRLS FROM ELOTV, I GET THEM
SKYPE, THEN I GET THEM NAKED AND THEN I RECORD THEM, THEN I
TELL THEM I WILL STREAM THE VIDEO LIVE ON ELOTV, THEN I MAKE
THEM CRY AND THEY BECOME MY OWN PERSONAL SLAVES THEN
WHEN IM SICK OF THEM I POST THE VIDEO ANYWAY. HAHAHAHAHA.
ADD ME ON SKYPE: QUADREPRE34 AND QUADREPRE35
[redacted] 3 minutes ago

The internet has run the world and this will continue till every one is dead all
you say is America I hope God has taken your soul to a better place and I
hope God gives those people their worst nightmare in their lives. People
realize pain when pain is applied to their hearts. This world needs to learn
how to have faith and gets to stop the bad and show the good side. If I

**High 5... someone's gone
death**
by ZephaniahGomez
1,038,423 views

**NEW Amanda Todd
video online:**
by ShantelleWinters
408,205 views

Amanda Todd's Story
by Shantelle
26,417 views

**Amanda Todd's Bully
Toss Comments Online**
by TheGangstas
1,771,680 views

**THE AMANDA TODD
SCUMS - Antisocial**
by TheGangstas
88,087 views

Amanda Todd² was not the only girl that Berenson appears to have had a connection to who committed suicide. In or around March of 2016, a teenage girl who went by the name Angel allegedly killed herself by slitting her wrists on web camera on Website A. One Website A user reported the following about her death:

But yeah, [Website A]/girls ans cc/younow have had one girl die already it was last year and she used the tag angel **[Berenson]** and sham got her to slit her wrist in the tub.

And, yet another girl, a 12-year old named Katelyn Davis, hung herself in December of 2016 while live streaming on web camera on Live.me. Berenson admitted he had the 42-minute video of her death, depicting her hanging herself from a tree in her front yard. Davis used the username ITZ Dolly on Live.Me.

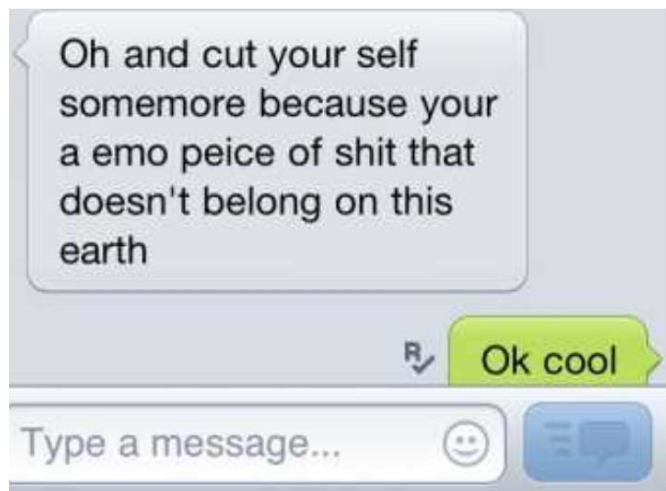
D. MV-8

One of the minors that Berenson victimized and blackmailed repeatedly was MV-8. Berenson communicated with her using multiple different usernames and played these fake personas against one another to get MV-8 to perform sex acts on camera. *See* Ex. C, Skype Chats MV-

² Amanda's mother plans to attend sentencing on April 22.

8. During her victimization, he even went so far as to tell MV-8 to cut herself.³

Berenson to then 13-year old MV-8



³ The chats included in this memorandum, along with some of the screenshots and descriptions of the videos of child pornography the group produced, are extremely graphic. Without actually attaching the videos or images as exhibits, and in fairness to the victims, the Government provides these chats and descriptions in an attempt to accurately convey their contents. *See United States v. Cunningham*, 680 F.Supp.2d 844, 847 (N.D. Ohio, 2010), *affirmed* 669 F.3d 723 (6th Cir. 2012) (criticizing the “sterilization” that takes place once child pornography enters the legal system and the “clinical” way in which images are frequently described).

Berenson tortured MV-8, who was actively cutting herself, for 18 months. He screen captured her cuts and took advantage of her less than stable home life.



In one conversation in September of 2016, Berenson told MV-8 he wanted “ass.” When she complained, “I’m tight af. It hurts,” he replied, “that’s ok just a bit of ass,” and when she couldn’t find the brush he wanted her to use, he told her, “then you can use a bottle instead :P, [you] gotta be taught a lesson.”

A week later, Berenson told her to “cam up for daddy master and finger that little pink asshole <3.” Then, Berenson got angry at MV-8 because he believed she had masturbated for someone else online. This was a common gripe Berenson had with MV-8, telling her, “AND YOU

SHOWED IN THERE DIDN'T YOU. fuck you liar. you showed more than your tummy. what else did you show?" After he yelled at her, she told him, "I JUST CUT THANKS." Berenson responded by telling her it's "not my fault" and then continuing to yell at her, "HOW MUCH DID YOU SHOW UNDER YOUR SHIRT? I ALREADY KNOW SO YOU MAY AS WELL CONFESS. IT WAS MORE THAN JUST TUMMY. BULLSHIT, WHAT ELSE? ... YOU TREAT ME LIKE SHIT TODAY."

After more than a year of victimization, then 14-year old MV-8 told Berenson multiple times that she was going to kill herself. Berenson responded by calling her "bitchy," asking her if she was on her "period," and told her, "that's why ur single." When MV-8 apparently told him she wasn't single, he cruelly countered, "who are you with? 145 internet perverts doesn't count." At one point, MV-8 put a rope around her neck on web cam and said she was going to choke herself.

But, no matter how many times MV-8 told Berenson she was going to kill herself, he refused to leave her alone. She blocked him from her Skype account and other social media in October of 2016. But, Berenson was not about to leave her alone. Berenson found MV-8's Facebook page, took screenshots of her family and her, and figured out who her parents

were. He told her if she didn't continue to masturbate for him, he would tell everyone that her father was molesting her and would send out videos he had made of her engaged in sexual activity with her pet dog. Ex. E, Blackmail MV-8.

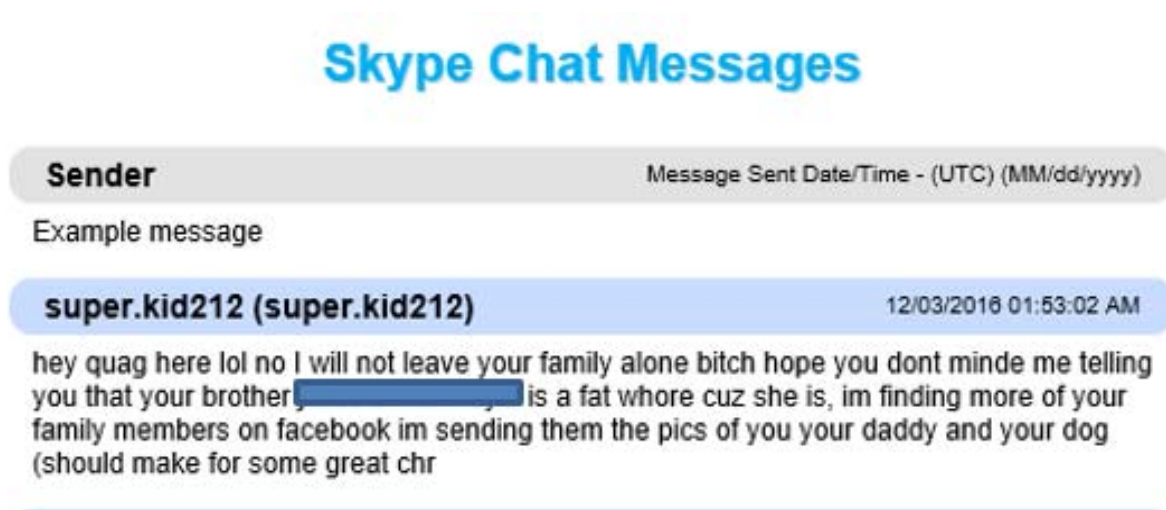
On November 18, 2016, he had her send him the below picture:⁴



He also hacked into her computer and shut it down, destroying the contents. See A-8, 2nd Letter, Filed Under Seal.

⁴ MV-8 is depicted naked in this picture. This photo has been cropped to protect her privacy.

In December, he created a new persona and sent her the message below:



Two days after Berenson sent this message, MV-8 went to the police. MV-8 provided Berenson's true name and information and told them about the blackmail. Although Berenson initially lied to MV-8 and told her he was 16, MV-8 was able to figure out who he really was because of other Website A users who did not like Berenson's tactics or the way he treated girls. A detective in Seattle went to Berenson's house and warned him to stop getting on chat websites. Berenson's mother told the detective she would monitor what Berenson was doing on the laptop and ensure that nothing like this happened again. After finding out that MV-8 went to the police, Berenson acted on some of his earlier threats.

Berenson had over 125 child exploitative or child pornography videos of MV-8 on his devices. Those videos depicted her engaged in

numerous sexual acts, including acts with her dog, and depicted her engaged in self-harm.

For example, Berenson recorded a video on August 11, 2016 of MV-8 that he entitled **[mv-8] love4**. In the video, MV-8 shows the camera all of the cuts on her arms, looks at what appears to be a computer screen, and then masturbates with her fingers. And, in November of 2016 (when he was actively blackmailing her), he made a video depicting MV-8 completely naked. She is on all fours with her bottom facing the camera, and a black dog is licking her genital area. Berenson created various titles for the videos he made of MV-8, including: MV-8 bm [blackmail], little MV-8, capture, MV-8 bate, and RV Cap. MV-8, who is now 17, and has attempted suicide more than once, plans to attend sentencing. *See* Ex. A-8, Impact Statement, Filed Under Seal.

Ironically, a federal investigation of Berenson was ongoing at the time of MV-8's report. MV-3 had reported Berenson for pretending to be a teenager and enticing her to engage in sexual activity on BlogTV and on Website A in July of 2016. Moreover, FBI Detroit learned that Berenson was blackmailing girls and was a prolific user of Website A and

sent that information to FBI Seattle in 2016. *See also* Ex. G, Screenshots Berenson.

E. Search Warrant Execution and Forensic Examination

On May 10, 2017, law enforcement executed a search warrant at Berenson's residence in Shoreline, Washington. Numerous electronic devices were recovered. Those devices were protected by two layers of encryption and by Berenson's complex 36-character password. Berenson agreed to speak to law enforcement both on the date of the search warrant and in June of 2017. He made a number of admissions:

- He said he had personally recorded thousands of videos of minor females engaged in masturbation or other sexual activity;
- He started exploiting girls on Website A in 2008 or 2009;
- He blackmailed at least ten minor females in order to get them to engage in sexual activity. He would blackmail them by threatening to share explicit images and videos of them with their Facebook friends, locating their schools and telling them he would share with their teachers, or threatening to share with their parents after locating their houses and parent contact information;

- He named several girls he blackmailed to include MV-4, MV-6 and MV-19;
- He recorded child pornography of girls using a number of different recording software programs, to include: Replay, Media Center, Hypercam, Bandi Cam, and Jackster;
- He had an automatic recording program set-up which would record activity and had a naming convention with the chatroom name followed by the number of videos recorded from a particular chatroom;
- He exchanged child pornography he made with others;
- He had downloaded other offenders' hard drives and used the material on their hard drives to extort them to get more child pornography;
- He took over other girls' web cameras ("ratting") and used this to watch two girls for months;
- He named numerous of his Facebook friends as persons he had victimized when they were minors;
- He identified 10 Skype accounts he used to victimize minors;

- He shared extremely complicated passwords he had for his devices.

The forensic examination of Berenson's devices is still underway. Thus far, the FBI has discovered over 5,000 videos and over 4,600 images of child pornography and 105,347 child exploitive videos and images. Berenson recorded over 1,128 hours of videos of child pornography and over 3,000 hours of child exploitive content. The longest video he recorded was over 5 hours. Moreover, Berenson's collection demonstrates a specific interest in very young children. He had hundreds of child pornography videos and images of prepubescent girls and infants or toddlers.

The last child pornography video Berenson created was produced the day of the search warrant execution, and he had logged-in to Website A as recently as the day before (May 9). In the two months prior to the search warrant and subsequent to the Seattle police visit generated by MV-8's information, Berenson logged-in to Website A more than 2,260 times. A few of the hundreds of rooms he visited during those two months are: suicideroom, punishment, cryingandfun, cryingandstuff, hoe[MV-23], number1capper, and pussymassage.

To give just a few examples, Berenson had over 40 child pornography or child exploitive recordings of MV-6 (who he blackmailed), 25 of MV-30 (whose web camera he “ratted”), 21 of MV-33 (who he blackmailed), over 120 of MV-8 (who he blackmailed), over 60 of MV-19 (who he blackmailed), and over 80 of MV-5.⁵ A chart summarizing the number of videos/images he had of just a small portion of the girls he victimized is below:

MV-1	52
MV-2	59
MV-4	6
MV-5	82
MV-6	43
MV-8	128
MV-16	42
MV-17	2
MV-18	8
MV-19	65

⁵ MV-5 was 11 or 12 years old when she was victimized. She and her mom will attend sentencing.

MV-22	5
MV-23	3
MV-24	114
MV-25	2
MV-27	10
MV-30	25
MV-33	21

F. Berenson's Use of Blackmail

In general, Berenson was extremely organized about his child pornography collection, making separate folders devoted to different girls. His organizational skills, in conjunction with his technological prowess, made him formidable when it came to blackmail. He found out everything about the girls he targeted, from their mother's email address to the issues their families were going through. He took screenshots of their houses and typed the information he knew about them over the screenshots. He saved these files with their names and sometimes added "bm" to indicate their purpose. *See* Ex. H, Blackmail Examples.

Screenshot from Berenson's Devices MV-6 (Redacted)



II. ADVISORY SENTENCING GUIDELINES

The Guidelines in this case are not in dispute. The parties agree that Berenson is a criminal history category I with an offense level 43, resulting in a Guideline range of life imprisonment.

III. SENTENCING FACTORS, TITLE 18 U.S.C. § 3553

Congress has provided, through 18 U.S.C. § 3553(a), the relevant objectives and factors to be considered by sentencing courts in imposing

a “sentence sufficient, but not greater than necessary.” Those objectives are: (1) the nature and circumstances of the offense, and the history and characteristics of the defendant; (2) the need for a sentence to reflect the basic aims of sentencing (including retribution, deterrence, incapacitation, and rehabilitation); (3) the kinds of sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need for restitution.

The most relevant factors are evaluated below, beginning with number 4, the sentencing guidelines.

A. The 3553(a) Factors as Applied in This Case

There are no sentencing guideline disputes. The parties agree that the appropriate guideline range is life imprisonment. The Government has carefully considered the sentencing factors and the need to avoid unwarranted sentencing disparities in recommending a sentence of life imprisonment.

1. Nature and Circumstances of the Offense

The only possible sentence that adequately takes into account the nature and circumstances of this offense is a life sentence. Berenson's conduct far surpasses any of the 23 previous offenders that have been sentenced so-far. The conduct of the others in the Base Group – Noel Eisley, Eric Robinson, Virgil Napier, Jr., and Terry Kovac – pales in comparison. In fact, the Base Group dissolved because *even* Berenson's fellow group members, who were exploiting little girls on a daily basis, thought his actions were too horrible and did not want to be associated with them. There is no end to aggravating factors when it comes to Berenson, but the most salient of them are listed below.

First, all the groups that followed the Base Group (the “fans” group, the “Bored” group, and the “Skype” group) specifically made rules banning blackmail and prohibiting the distribution of their recordings to non-members. Berenson did both without hesitation. He not only lacked empathy; he actually enjoyed torturing the girls he victimized. He took screenshots of him threatening them, had videos of them crying, and made fun of the girls who ended their lives. He told girls to self-harm and then saved screenshots of their bleeding arms and saved video that

captured what he had convinced them to do. During the time period in which he was blackmailing 14-year old MV-8, he made her get on her hands and knees and have her pet dog lick her. He had her write a note saying that she was a whore. When girls tried to cut-off contact, Berenson only became more aggressive, using their personal information to force them to continue doing what he wanted. The only thing that worked to stop the blackmail was Berenson's arrest.

He distributed the videos he made of them all over the Internet. He would post videos in a public chatroom with hundreds of users. He shared them on Skype and Mega.Nz. He talked about these girls as if they were objects instead of people and bartered for specific kinds of videos. The one comfort parents had with every other Website A offender was the knowledge that the group generally did not share outside of their membership. Not so in this case.

Second, Berenson's collection was massive. By his own admission, he produced child pornography of over a thousand girls. The forensic examination revealed that he had over 110,000 child exploitive and child pornography images and videos. The child pornography videos spanned more than 1,100 hours, with the longest child pornography video over five

hours in duration. These numbers would be staggering in a receipt or possession case, but here, in a production case, they are sickening.

Third, Berenson is the most technologically sophisticated of any of the 23 Website A offenders. He knew how to do things that none of the others knew how to do. Like Garrison, he created software programs to automatically record on Website A and other websites. But, his knowledge went well beyond that. He knew how to take over girls' web cameras to spy on them for months at a time in their bedrooms. He knew how to remotely download another person's hard drive, knew how to change their passwords and account recovery programs, and knew how to steal their files. He used double-layer encryption to safeguard his collection.

Fourth, Berenson's conduct spanned a longer period of time and was more wide-reaching than other offenders. He was on Website A alone for a decade but on other websites doing the same thing years earlier. He frequented many web cam based sites and was well-known on several of these sites because of it. He visited BlogTV and had the explicit image of her that was used to blackmail her; he was on Live.me during the time period when Katelyn Davis killed herself.

Fifth, Berenson's collection was very organized. He categorized all of his files in folders with each girl's name. He figured out where girls lived and made a screenshot, complete with their parents' information, their information, their Facebook accounts, their telephone numbers, and a photo of their house. He saved specific screenshots with the word "bm," presumably to signify to himself that he could come back to them later if needed.

The nature and circumstances of this offense suggest that a sentence proportionate to the harm caused is appropriate, but the harm is so great here that this cannot be done. A life sentence is not sufficient but it is the best option the Court has before it in consideration of this factor.

2. History and Characteristics of the Defendant, 18 U.S.C. § 3553(a)(1).

Nothing about Berenson's history and characteristics suggests that a sentence of life imprisonment is unwarranted. Berenson had and continues to have a supportive family and had a childhood free from abuse. PSR ¶¶ 46-47. All of his material needs were met, he received a high school education with some college, and he is healthy with no history of medical issues. PSR ¶¶ 46-47, 54, 61-62.

Berenson is autistic. The defense has provided the United States with an eight-page report detailing the results of a mental health evaluation completed by Dr. George F. Parker. Dr. Parker's diagnosis, however, does very little to mitigate against the landslide of aggravating factors here. More importantly, Dr. Parker's report suffers from two severe limitations. First, Dr. Parker did not review the evidence in this case. Berenson exploited thousands of girls, blackmailing several, taking over girls' web cameras to spy on them, and ignoring their pleas to stop. The government has more information about Berenson's online activities—free of any minimization contained in Berenson's descriptions of his own actions—than it can even examine. But, Dr. Parker did not review that information. Instead, Dr. Parker relied on the honesty of Berenson and Berenson's family (who knew about Berenson's exploitive activity at least as early as 2012 when MV-24 called them but were unable to put a stop to it).

The second limitation of Dr. Parker's report—which relates to the first—is that Berenson lied to Dr. Parker. Berenson said he did not blackmail girls. But he did. Berenson said he did not post images or videos of the girls he exploited (at least the ones he exploited without the

help of others). But he did. Berenson told Dr. Parker “you get a lot more from girls by being nice.” But Berenson wasn’t nice. He was vicious. He tricked innocent children into believing he loved them, was their age, and was their boyfriend. He built their trust until they did what he wanted, and then switched gears and became ruthless and cruel, threatening them, directing them to cut themselves, and boasting about spreading their images all over the Internet.⁶

In sum, Dr. Parker spent just three hours with a man who spent years lying to children in order to sexually exploit them. That Dr. Parker did not get the full picture of Berenson’s conduct from this interview should not surprise anyone familiar with Michael Berenson.

But even reviewing Dr. Parker’s evaluation—limited as it is—does not support a lesser sentence for Berenson. For example, Dr. Parker

⁶ In 2015, the Journal of the American Academy of Psychiatry and the Law (“AAPL”) published practice guidelines for forensic assessments, in which it noted: “it is an important characteristic of the forensic assessment that the evaluator, unlike a clinical interviewer, must take a questioning or skeptical approach to the interview.” 43 J. OF AMER. ACA. PSYCHIATRY AND THE LAW, *AAPL Practice Guideline for the Forensic Assessment*, at 512 (2015 supp.). These practice guidelines were published for good reason. Put simply, people like Berenson, who have a decade long history of lying and manipulating and who have every interest in continuing to do so based on their status as a defendant, cannot be taken at their word.

pointed to Berenson's fixation on certain interests—including weather, car racing, and police shows—as evidencing his autism. Importantly, Berenson is also fixated on obtaining sexual arousal from the online exploitation of preteen girls. According to Dr. Parker, Berenson “has remained fixated on masturbating to images of girls” between the ages of 12-14 years old. It is because of this fixation that even after victims called his house crying, and even after Seattle police warned him, Berenson continued to produce child pornography until he was in prison and without access to a computer. Similarly, Berenson never voluntarily deleted images or videos from his collection. According to Dr. Parker, Berenson's autism diagnosis means he resists changes to his “circumstances and routines.” Such resistance to change means that if Berenson is ever released from custody, he is likely to continue wreaking havoc on unsuspecting girls. Girls who have not yet been born will be threatened by a free Berenson.

To be clear, Berenson should not be punished for being autistic. The government is not seeking an increase in his sentence as a result of Dr. Parker's diagnosis. Instead, Dr. Parker's conclusions and evaluations should be put in their proper place within the section 3553(a) factors.

The facts of Berenson’s case—his conduct, his fixation on preteen girls, his dishonesty to Dr. Parker, and his status among other offenders as the worst of Website A users—aggravate his sentencing factors far above any mitigation the autism diagnosis may offer. Put another way, whatever effect Berenson’s autism may have on his life, it clearly did not have an effect on his capacity to hunt, manipulate, exploit, and blackmail girls half his age. It should, therefore, not serve to lessen his sentence.

3. The Sentence Imposed Must Reflect the Seriousness of the Offense, Promote Respect for the Law and Provide Just Punishment, 18 U.S.C. §3553(a)(2)(A)

The offense of child exploitation enterprise is incredibly serious.⁷ And, the ways that Berenson in particular violated the statute—by helping create the prototype for future groups of how to exploit girls on Website A, by blackmailing and tormenting girls, by producing child pornography of thousands of little girls for more than a decade, and then by distributing the videos he made across the Internet—are particularly egregious. Each count of production carries a 15-year minimum, and

⁷ Congress identified the seriousness of child exploitation enterprises when it set the minimum penalty at 20 years, which is the highest minimum punishment set forth in federal law for first-time, non-homicide offenses. *See* 18 U.S.C. § 2252A(g)(1).

each count of exploitation of a minor carries a 10-year minimum and a maximum of life imprisonment. Assuming Berenson received only the mandatory minimum punishment for each girl he victimized, he would face a sentence of 1,500 years.

Not only did Berenson continue to target girls after learning that they were suicidal and harming themselves, but he encouraged and sometimes even directed their self-harm. And, he ridiculed them for it, recording it and then distributing the videos to others to laugh at them in their moment of distress. Berenson literally saw a girl (MV-8) put a noose around her neck and saw another girl write a suicide note on web cam and yet continued threatening them and coercing them to engage in sexual activity.

Berenson normalized sexual behavior that is completely abnormal. He robbed these young girls of their innocence. He taught them that they are only special and will only get attention and “fit in” with others their age if they are willing to let others exploit their bodies. This Court will hear from a handful of girls that Berenson targeted on April 22. The Court will hear about their daily struggle and hear that some, like Amanda, were overcome by it. But, the Court will not hear from

hundreds and hundreds of others that are no less victims in this case who have not yet been identified. Although Berenson permanently memorialized these girls in their most vulnerable state by recording videos of them undressing and engaged in sexual activity in their childhood bedrooms, this Court will never know their story beyond those screen captures.

4. The Sentence Imposed Must Afford Adequate Deterrence to Criminal Conduct and Protect the Public from Further Crimes of the Defendant, 18 U.S.C. §3553(a)(2)(B) and (C)

No sentence short of life will be sufficient to deter Berenson. In 2011 or 2012, at least one minor victim personally called and spoke to his parents about what he was doing. To no avail. Even knowing law enforcement might get involved had no impact on Berenson's behavior. He remained an active member of the Base Group and targeted Amanda and other girls on BlogTV. Shortly after that, other offenders publicly posted his information and photo to try to stop the blackmail. Berenson responded by blackmailing MV-4. Then, in December 2016, MV-1 and MV-3 came forward. Seattle police visited his house and warned him to stop. Berenson did not. He continued to produce child pornography and

continued to target girls on Website A all the way up to the date of his arrest. In fact, he visited Website A chatrooms more than 2,200 times in the two months prior to the search warrant and after the Seattle police warning. And, he created child pornography the *day of* the search warrant execution. It was only when Berenson was incapable of continuing the conduct after his incarceration that the girls he targeted finally got some relief.

A life sentence is also necessary to deter others from doing what Berenson did. Unfortunately, Berenson's crimes are all too easy for others to commit. Because the Internet allows users to maintain anonymity, an offender need only have recording software and knowledge of an unmonitored website to do what this group did. The primary recording software that Berenson used is free and can be downloaded by anyone with a click of a button. Potential offenders who think about doing what Berenson did – producing thousands of child pornography videos, blackmailing preteen and teenage girls, encouraging and directing them to self-harm, and ridiculing them – should know that, if they are caught, they will spend the rest of their lives in prison.

Most importantly, a life sentence is necessary to protect the public. According to a 2013 report from the Centers for Disease Control, suicide is the third leading cause of death for children age 10 to 14 years old, and the second leading cause of death for children age 15 to 24.⁸ A July 27, 2016 assessment by the FBI concluded that “it is very likely child sextortion victims are attempting suicide or engaging in other self-harming behavior due to their sextortion victimization,” with “very likely” meaning 80-95 percent. *Id.* According to the assessment, “the prevailing hypothesis continues to be sextortion is a major, if not the underlying, factor for child victims taking their lives in these scenarios.” *Id.*

Unfortunately, of all the Website A sentencings so-far, these statistics ring most true in Berenson’s case.⁹ For example, MV-1, victimized by the group at the age of 14 and blackmailed by Berenson, suffered from depression, self-harm, and was hospitalized for attempted suicide. MV-2, victimized at the age of 13 and directed to self-harm,

⁸ *Children Committing Suicide or Engaging in Other Self-Harm due to Sextortion Victimization*, FBI Criminal Investigative Division, (July 27, 2016).

⁹ Because the victims live all across the United States (and in other countries), the Government is not aware of every incident that has occurred. However, what we do know is frightening enough.

continues to suffer from anxiety, depression, and insecurity. MV-5 (targeted when she was 11) has struggled immensely with self-harm and has attempted suicide. Her family now has a therapy dog. MV-6, who was 13 when she was targeted and who was blackmailed by Berenson, moved residences and changed schools.

MV-8, who was 13 and blackmailed and directed to self-harm by Berenson, suffers from depression, self-harm, and has attempted suicide multiple times. Most recently, she attempted suicide by cutting herself with glass this past year. She also injured her hand slamming it into a wall. MV-21 struggled with suicidal thoughts, depression, and anxiety. Her mother reports that she cries every night, and that the whole family is in therapy because of what happened.

MV-24, who was 14 and was tormented by Berenson, reports that she was hospitalized for suicidal ideations after two years of sextortion. She has been diagnosed with major depressive disorder, PTSD, and generalized anxiety disorder.

And, MV-27, Amanda Todd, struggled with self-harm, depression, and anxiety. She changed schools multiple times. She attempted suicide by drinking bleach. She tried to tell the world her story to gain strength,

but the ridicule continued. A little over a month later, at the age of 15, she killed herself.

Berenson should not have been free for so long to do what he did to each of these girls. There is no way to rewind time and undo what has been done. But, this Court has the ability to ensure that Berenson is never again free to harm even one additional child.

5. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct 18 U.S.C. §3553(A)(6).

A life sentence will avoid unwarranted sentencing disparities. Dozens of defendants who created child pornography of two or three victims receive life sentences or sentences of hundreds of years of imprisonment. But, here, the Website A offenders' conduct went well beyond two or three production victims. And, Berenson is the most culpable Website A offender so-far sentenced. No other offender comes close. The technological sophistication, the blackmail, the threats, the distribution of the videos he made, the callousness, his obsession with suicide and self-harm, the size of his collection, the duration of his conduct, the harm to his victims – all of these put him in an entirely different category of evil. Other offenders in this case have received life-

equivalent sentences of 40 or 41 years' imprisonment whose conduct is much less egregious than that of Berenson. To sentence Berenson to less than a life-equivalent sentence would create unwarranted sentencing disparities whereas a life sentence will not.

Conclusion

The Government requests that the Court impose a sentence of **life imprisonment**.

Respectfully submitted,

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Dated: April 15, 2019

Certificate of Service

I hereby certify that on April 15, 2019, I electronically filed the Government's Sentencing Memorandum for the United States with the Clerk of the Court of the Eastern District of Michigan. The memorandum and attached exhibits were sent via Fed Ex to defense attorney Jim Thomas.

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